REMARKS

The Final Office Action mailed January 24, 2007 has been received and reviewed. This response is directed toward that action.

Applicant believes that the Examiner's final rejection is premature because Applicant's amendment did not necessitate new grounds of objection. Applicant also believes that this Amendment places the Application in condition for acceptance.

Claims 1-40 are pending. Claims 10, 11 and 14 are allowed. Claims 1-9 and 15-31 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner quotes "that may simultaneously inject thermodynamically treated fluids" and states that this type of language is indefinite in that one of ordinary skill cannot determine the bounds of the claim.

1. Request for Reconsideration of Finality and Withdrawal of Finality of Office Action

The etymology of the third singular present English auxiliary verb *may* is Middle English, from old English *mæg*, meaning "to have power", "to be able". "Merriam Webster OnLine Dictionary", http://www.m-w.com/dictionary/may. It is akin to High German *mag* from the infinitive *mögen*, meaning "to be physically capable of doing" or "to be able". "A New German and English Dictionary", (Funk & Wagnalls, 140th Thousand, 1906) at 409. *May* is used in law in an even more definitive sense to mean *shall* or *must* where the sense, purpose or policy requires this interpretation. "Merriam Webster OnLine Dictionary", http://www.m-w.com/dictionary/may. "Regardless of the instrument, whether constitution, statute, deed, contract, or whatnot, courts not infrequently construe *may* as *shall* or *must* to the end that justice may not be the slave of grammar." Black's Law Dictionary, Revised Fourth Edition citing *Minor v. Mechanics' Bank*, 1 Pet. 46, 64, 7 L.Ed. 47; *Stapler v. El Dora Oil Co.*, 27 Cal.App. 516, 150 P. 643, 645 at 1131.

May in "that may simultaneously inject thermodynamically treated fluids" clearly means *has the power to* or *is able to* or *is physically capable of* or even *must* but never *cannot*. The language quotes precisely describes the subject matter that Applicant

regards as his invention: A system that is able and physically capable of injecting thermodynamically treated fluids, but does not require that the fluids being injected be thermodynamically treated fluids as defined in the specification (e.g., they may be mixed or unmixed gasses and liquids heated and cooled by other means well-know in the art).

The Examiner asks, "Do the claims require the thermodynamic fluid to be injected or not?", then states that he treats the claims "as if they do not require the thermodynamic fluid to be injected". But in fact he treats the claims as though they do not include the possibility of injecting thermodynamically treated fluids, not that they do not required it, and certainly not that they may do it.

Treating claims 1-9 as though they do not include the possibility of injecting thermodynamically treated fluids is not equivalent to treating them as if they do not *require* that thermodynamic fluid be injected. The former is what necessitated the new grounds for rejection whereas the latter does not. Therefore, Appellant submits that the final rejection was premature because Appellant's amendments did not necessitate a new grounds of rejection and respectfully requests that it be withdrawn.

2. Amendment of Specification and Claims

To expedite consideration of this application and the end that justice not be the slave of grammar, Appellant has amended claims 1, 3, 5, and 6 to eliminate the word *may* altogether.

In order to address what may be considered further indefiniteness in these claims. Applicant has also amended the specification by amending the penultimate paragraph on page 6 to define *thermodynamically treated fluids*, as used in the specification and claims, to mean "gasses and liquids that were heated and cooled by internal thermodynamic exchange". Applicant has also amended the specification by adding an "equilivance" paragraph on page 19 to describe features of specific embodiments that should be apparent to those skilled in the art, including that the embodiments disclosed are capable of injecting mixed or unmixed gasses and liquids heated and cooled by other means well-know in the art.

Therefore, amended claims 1-9 (and their dependent claims 15-31) unambiguously describe the capability of appellant's invention to inject

thermodynamically treated fluids. Applicant believes this addresses any basis for rejection of claims 1-9 and 15-31 under 35 U.S.C. 112, second paragraph, and that, if this amendment is entered, those claims will be in condition for allowance.

The Examiner also rejected claims 1-9 as being anticipated by Stoisits et al 5,421,408, claims 3-5 as being anticipated by McCarvell et al at 3147808 and by Dalsmo et al 6,595,294, and claims 1 and 12 as being anticipated by Prats et al 3,727,686, all under 35 U.S.C. 102(b). However, none of the recovery or injection systems in Stoisits, McCarvell, Dalsmo or Prats inject "gasses and liquids that were heated and cooled by internal thermodynamic exchange" (thermodynamically treated fluids as that phrase is defined by Applicant) whereas all of the foregoing amended claims 1, 3, 5, and 6 (and their dependent claims 15-31) do.

The Examiner also objected to claims 13 and 32-40 as being dependent upon a rejected base claim, claim 12. However, as pointed out by the Examiner, the liquid in claim 12 is a thermodynamic fluid but it is not "gasses and liquids that were heated and cooled by internal thermodynamic exchange" (thermodynamically treated fluids as that phrase is defined by Applicant).

Since none of the cited prior art involves thermodynamically treated fluids, none of it anticipates claims 1-9, or 12 or any claims that depend on them. Therefore, Applicant believes that, if this amendment is entered, his application will be in condition for allowance.

Based on the foregoing amendments and remarks, Applicant submits that the present claims are not indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as his invention, nor are they anticipated by the cited references. Accordingly Applicant respectfully requests that the Examiner withdraw the rejections and objections, allow the claims, and allow this case to proceed to issue.

If any issues remain, the resolution of which may be resolved through a telephone conference, the Examiner is invited to contact Applicant's attorney at the number listed below.

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Applicant thanks the Examiner for his helpful comments.

Respectfully submitted,

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